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W.P.No.32539 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 24.02.2023

Order Pronounced on : **11.04.2023**

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.No.32539 of 2022
and
W.M.P.No.31942 of 2022

K.Palanivel

... Petitioner
Versus

- 1 Government of Tamil Nadu,
By its Collector, Collectorate Office,
Namakkal.
- 2 The Tahsildar,
Rasipuram Tauk,
Namakkal District.
- 3 The Chief Engineer,
Water Resources, Public Works Department,
Trichy.
- 4 The Superintendent Engineer,
Water Resources,



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Public Works Department,
Gandhi Road, Salem.

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5 The Executive Engineer,
Water Resources, Public Works Department,
Namakkal.

6 The Assistant Executive Engineer,
Water Resources,
Public Works Department,
Kutcheri Street, Rasipuram,
Namakkal District.

7 The Sub-Divisional Executive Magistrate/RDO,
Namakkal.

8 The Superintendent of Police,
Namakkal District.

9 Anaipalayam Village Panchayat,
By its President,
Anaipalayam, Rasipuram Taluk,
Namakkal District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the 1st respondent through respondents 2 to 6, to release the excess water above normal level in Anaipalayam Lake, through its three sluices, so as to protect the lives and livelihood of villagers of Chandrasekarapuram Panchayat, from the inundation caused by water of Anaipalayam Lake.

For Petitioner : Mr. J. Srinivasa Mohan

For Respondents : Mr. P. Muthukumar, (for R1 to R8)



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State Government Pleader.

: Mr.N. Manokaran (for R9)

ORDER

"நீர்இன்று அமையாது உலகெனின் யார்யார்க்கும்
வான்இன்று அமையாது ஒழுக்கு"- குறள்-20

A. The Petition:

The President of *Chandrasekarapuram Village Panchayat* has filed this Writ Petition praying for issuing a Writ of Mandamus directing the first respondent, through the respondents 2 to 6 to release the excess water above the normal level in the *Anaipalayam* lake through its three sluices so as to protect the lives and livelihood of the villagers of the *Chandrasekarapuram Panchayat* from inundation caused by the water of *Anaipalayam* lake.

B. Facts in Brief:

2. *Chandrasekharapuram* Village and *Anaipalayam* are two adjacent villages in Rasipuram Taluk, located nearby Rasipuram Town. *Chandrasekarapuram* village has got 8000 residents, while *Anaipalayam* Village



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has 800 residents. In *Anaipalayam* Village, there is a lake spread over 126 acres.

While *Anaipalayam* Village was a *Ryotwari* Village, *Chandrasekarapuram* Village was a *Mitta*, when the Tamil Nadu Estates (Abolition And Conversion into Ryotwari) Act, 1948 came into force. While so, after the introduction of the said Act, in respect of certain lands of total area claimed to be about 500 acres in *Chandrasekarapuram* Village, *Ryotwari Patta* was refused by the authorities on the ground that these lands were liable for submersion.

2.1 The said order of the Commissioner of Settlements, Board of Revenue, dated 23.03.1962, was put to challenge by the then holders of these lands before this Court in W.P.No.772 of 1962. By a Judgment dated 03.09.1964, the learned Single Judge of this Court, finding that the land has been in cultivation for a number of years, even prior to the introduction of the Act, held that merely because the land is liable for submersion, it cannot lose its character as *ryoti* land. On the said findings, the matter was remanded back to the authorities for consideration and issuance of *Ryotwari Patta*. As per the said direction, the question of grant of *Ryotwari Patta* for these lands were considered by the then



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Assistant Settlement Officer under the Act and by an order dated 19.06.1971,

Ryotwari Pattas were granted to the claimants, but, however, with the following conditions:-

“The pattadars should not put up check dams or digging up channels affecting the water level of tank

The pattadars should not impose any new conditions affecting the rights of ayacutdars of Anaipalayam Tank

The pattadars should not interfere with the easement rights of the public over the tank

They should not prevent in any form over stagnation of water.”

2.2 However, it seems thereafter, the authorities as well as the owners of the land had forgotten about the above conditions and the entire area at present has a mixed development consisting of both residential houses and cultivation. It is also now contended before this Court that even the Government has allotted lands for landless poor in the said area. There are not only houses, even the



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panchayat has dug borewells and built pumping stations and other facilities for drinking water in the said area.

2.3 While so, in the year 2022, there was copious rainfall. On account of nature's bounty, the *Anaipalayam* lake is filled up to the brim. As a natural consequence, the entire tank bed area covered by the aforesaid conditional *Patta* stands submerged under water and there is inundation to a depth of about two to three feet. The residents of the ill-located houses are seen walking in two feet of water to their houses and the cultivation in the rest of the area had become impossible. Therefore, these residents made a request to the authorities to open the sluice gates and reduce the water level, in whose support the President of the Village *Panchayat* has filed this Public Interest Litigation.

2.4 It is the case of these residents and farmers that of the original *ayacut* area of the lake one *Padaiaipppa Developers* had already converted 190 acres of *ayacut* lands into real estate/housing sites, on account of which presently only



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about 100 acres are being cultivated. Therefore, the need for water has been reduced. This apart, storm water drains which are constructed in Rasipuram Town and in the adjacent areas, also fetch water to an adjacent water body, which is again fed into the *Anaipalayam* lake through canals. As a result, more water is being stored in the *Anaipalayam* lake, more than what is necessary and more than the maximum capacity level. Therefore, they made requests and protests to reduce the water level. The *Ayacutdars* opposed and countered, leading to a law and order situation. Proceedings were initiated under Section 145 of the Code of Criminal Procedure, and the Revenue Divisional Officer passed an order on 21.10.2022 directing the release of water. The said order was challenged by the *Ayacutdars* by approaching this Court in Crl.R.C.No.1448 of 2022, and by order dated 18.11.2022, this Court set aside the order of the Revenue Divisional Officer and remanded the matter back to the authorities. When the matter was pending before the Revenue Divisional Officer, the present Writ Petition came to be filed before this Court. Then the Revenue Divisional Officer, passed an order on 27.01.2023, stating that the parties have to await for the decision of this Court in the present Writ Petition. However, when this Court adjourned the matter, an



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order was finally passed on 3.02.2023 stating that the water cannot be released in view of the conditions imposed in the *Patta*. It is in this background the present writ petition was taken up for hearing.

C. The Submissions:

3. *Mr.J.Srinivasan Mohan*, the learned Counsel for the petitioner taking this Court through the rough sketch filed along with the typed set of papers and to the photographs, would submit that this was not an adversarial litigation but is a plea for the lives and livelihood of people. He would submit that the water level has to be necessarily brought down even to bring the drinking water borewells constructed by the *Panchayat* into operation. This apart while the water stored in the lake will be useful for cultivation of land only about 100 acres of *ayacut* land, and cultivation in about 500 acres of land is put to jeopardy, on account of the excess storage of water. If the water level is brought down by opening the sluice gates for about 3 feet, it would benefit cultivation of these 500



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acres and also the residents can properly use their houses. The roads which are laid by the Government also lay submerged. Therefore, he would pray that this Court should take into account the overall and wholesome picture into consideration and without insisting on the technicalities for challenging the ultimate order of the Revenue Divisional Officer passed under Section 145 of the Code of Criminal Procedure Code, by way of revision proceedings, should consider the case of the petitioner on merits and order for opening of the sluice gates up to the appropriate level.

3.1 He would rely upon the Judgment of this Court in W.P.No.772 of 1962, whereby this Court directed to issue *Patta* in favour of the petitioners therein and also the earlier proceedings of the year 2005, where under a similar situation, this Court had directed to release the excess water.

3.2 Per *contra Mr.P.Muthukumar*, learned Government pleader would submit that now the Revenue Divisional Officer has passed the final order after considering the cases of both 'A' party and 'B' party under Section 145 of the



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Code of Criminal Procedure, finally deciding not to release the water

considering the larger public good and the necessity to store the water firstly, to be used for cultivation until next monsoon, secondly to keep up the ground water table which is essential during summer, thirdly to augment drinking water needs of people as well as cattle. He would submit that the order of grant of *Patta* dated 19.06.1971 categorically imposes an embargo on the *Pattadhars* that they should not interfere with the rights of the *Ayacutdars* and also should not in any form prevent the stagnation of the water in their lands. Their prayer is diametrically opposite and offensive to the said condition imposed in the *Patta*. Therefore, they are not entitled for the prayer in the Writ Petition.

3.3 *Mr.N.Manokaran*, Learned Counsel appearing on behalf of the ninth respondent would submit that once the order of the Revenue Divisional Officer has become final, the present Writ Petition cannot be entertained. He would submit that the requirements of the *Ayacutdars* should be received paramount *consideration* in the matter of opening of the sluice gates. He would submit that only in the years where there is copious rains, water can be stored and used for



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the next crop. Even at that time, if the persons like the petitioners come up with prayer of wasting water, their rights will be lost forever and therefore, he opposed the Writ Petition.

D. The Discussion & Findings:

4. We have considered the rival submissions made on either side and perused the material records of the case. At the outset, we are in agreement with the learned Counsel for the petitioner that since this involves a conflict of the interests of *Ayacutdars* and the *Pattadars* of *Chandrasekarapuram* Village, and the interests of the *Pattadars* to reside in their houses and cultivate *vis-à-vis* the need for storage of water and the life of the people during the water stagnation season, without considering as to the technicality of challenging the final order passed by the Revenue Divisional Officer under Section 145 of Cr.P.C, we are inclined to examine the prayer of the petitioner on merits.

4.1 We have to consider the prayer of the petitioners in the teeth of the principles of larger public good and sustainable development. Even though the



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water bodies and the resources are vested and at the disposal of the State, the Hon'ble Supreme Court of India considered the very question of development of tank beds etc., leading to the destruction of water bodies and their storage level and reiterated the constitutional mandate as enshrined in Article 48-A, 51-A of the Constitution of India, principles of sustainable development and the public trust doctrine in its Judgment in *Intellectual Forum, Tirupathy Vs. Andhra Pradesh and Ors.*², and mandated that these resources/lands are vested in the state on public trust and these lands should be put to their traditional uses or uses particular to that form of resource.

4.2 Water is the lifeline for every living creature of the planet and is the primary reason for life on this planet. By its very nature only through some lands the water will flow and only in its natural address, the water will stagnate. The water which stagnates in the lake is not only for the *Ayacutdars*, but serves a very important purpose of replenishing the groundwater level in the entire area and ensures water quality of all downstream watercourses and is an important source of livelihood and it is essential for all humans, cattle, flora and fauna and

² (2006) 3 SCC 549



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all living beings in the area. It not only nourishes the eco-system, is also a habitat itself and preserves the bio-diversity. This is a classic case where the government and the authorities acted with due wisdom and sensitivity when they had meticulously mapped the water stagnation area and considered the issue of submersion and the nature of the lands at the time of issue of *Patta*. The fact is that water will stagnate over the lands for about 5 to 7 months or even more and during the the rest of the time cultivation can be done in the runoff/bed area. This has been meticulously observed, recorded and entered in the uses of these lands in the revenue records. Accordingly conditions were imposed not to impede the water stagnation in any manner while granting *Pattas*. The manner in which the authorities have in the yesteryears classified these kinds of lands including mapping the water bodies, *Odai*, *Kanmai*, runoffs, water courses even in private lands, bed area, and catchment area, is a great example of how the State and the Public Authorities have discharged the trust imposed on them, thereby ensuring sustainable development.

4.3 On the same breath, this is also a classic case, which exposes, the



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triumph of ignorance over wisdom, greed of the real estate/profit over life aligned with nature. In spite of the conditions of *Patta*, all these years, slowly, the authorities have allowed haphazard and illegal developments on these *Ryoti* lands. The apathy is so writ large that even the Government facilities such as the *Panchayat* borewell, etc., and laying of roads have all been done in this submersion area. Similarly when the State of Tamil Nadu has huge tracts of dry and non-cultivable lands which are very much suitable for inhabitation and real estate, mindlessly, the authorities have allowed the development of *ayacut* lands into real estate on the other side of the lake.

4.4 It is true that in the past conversion of these water bodies and water courses have taken place, but, now, we are paying a heavy price. Urbanisation and population growth have resulted in a grave strain on the availability of potable and drinking water, besides for cultivation. The shrinking of cultivable lands, especially wet lands with irrigation facilities is a matter of grave concern. There are also excessive rains due to climate change and all these have cumulatively forced and triggered a strict sense of responsibility to salvage the



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existing water bodies and their storage capacity and the tank beds, catchments, and runoff areas. This Court has also issued directions to the State of Tamil Nadu to preserve all water bodies and lands ***L.Krishnan Vs. State of Tamil Nadu***¹.

4.5 *Ryotwari Patta*, is for the purpose of cultivation. *Patta* was granted with a specific condition that the owners should not prevent the stagnation of water by any means. Already the developments made by them by itself amount to a violation of the condition and their prayer to open the sluice gates for the water level to recede is in direct contravention of the conditions of the *Patta*. If they are put to inconvenience on account of building homes in the land which is prone to submersion during rainy seasons, it is the individuals themselves who have to be blamed. It shows the callous attitude and recklessness on the part of the State Authorities in granting facilities such as water connection, electricity connection, laying of roads, etc., inside such submersible land in contravention of their own order dated 19.06.1971. This is not just a case of conflict of interests of the *Ayacutdars* alone. But these violations of patta conditions directly and adversely impact the environment, stems in bio-degradation, and poses grave

¹ AIR 2005 Mad 311



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danger to the preservation of the precious natural resource, '**water**'. It is only the man-made mischief which has to be undone, and not the natural stagnation of the water which has to be prevented. Therefore, following the principles of sustainable development, this Court cannot direct the authorities to plunder the natural resource, namely, water stagnation, for the benefit of the lawbreakers. The stagnation of water is not only essential for release of water while the *Ayacutdars* need for cultivation until the next monsoon, but it is also extremely crucial for upkeep of the groundwater table and recharge of aquifers. It also directly and indirectly augments the drinking water needs of the human population, not to mention of the domestic cattle and all flora and fauna. The argument to open the sluices to release millions of gallons of water so that the tiny borewell is functional again shows our ignorance and how far we have dissociated ourselves from life aligned with nature.(இயற்கையோடு இயைந்த வாழ்வு). The great Organic farming scientist *G.Nammalvar* states that “we should always look up to the sky for all our water needs and not beneath the ground”. It is also scientifically proven that water extracted from the ground in many places contains minerals which are harmful to health, while water



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contained in these natural sources is better suited provided they are appropriately treated, filtered/boiled and thereafter used for drinking purposes.

4.6 It can be seen that the State of Tamil Nadu has already framed statutory rules in Tamil Nadu Change of Land Use (From Agriculture to Non-agriculture Purposes in Non-planning Areas) Rules, 2017, vide G.O.Ms.No.79, Housing and Urban Development Department, dated 04.05.2017 in exercise of its powers under section 47-A of the Town and Country Planning Act, 1971. As per Rule -6, if the land is fit for cultivation, then, it cannot be developed into plots/real estate, which reads as herunder:

“6. Guidelines to be followed by the Collector for giving his prior concurrence.-

(1) The Collector shall satisfy himself that the land in which development is proposed does not fall in any of the following categories, namely:-

(a) Public water body like channel, canal, tank, lake, river, etc.

(b) Government Poromboke land, temple lands, wakf properties and other lands belonging to religious/charitable institutions.

(c) Vacant lands with any encroachment on a public road or street or on any other land over which the applicant does not possess ownership right.



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(d) *Lands below the alignment of high tension and extra high voltage electric line including tower lines.*

(e) *Land which is fit for continuing the cultivation.*”

(emphasis supplied)

4.7 In the teeth of the above rule, we could not comprehend as to how *Ayacut* lands can be converted into residential plots/non-agricultural use. It is the duty of State authorities to see to that the need for housing or other purposes does not violate the development control rules, which are framed with a view to preserve the environment and further sustainable development.

4.8 For all the above reasons, we do not find any error, whatsoever in the order of the Revenue Divisional Officer, dated 02.02.2023 refusing to open the sluice gate. We do not find any right or equitable consideration in favor of the petitioner or the other alleged residents/cultivators of the submersible water area.

E. The Result :

5. In the result:



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(i) W.P.No.32539 of 2022 shall stand dismissed;

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(ii) The order of the Revenue Divisional Officer, dated 02.02.2023 bearing proceedings Na/Ka/No.9850/2022/M1, shall stand affirmed;

(iii) The respondents 1 to 9, shall ensure the conditions imposed by the Assistant Settlement Officer, Salem in his order dated 19.06.1971, in R.B.1/Sec.11(a)/Rasipuram/1968, be properly observed ;

(iv) The respondents shall take adequate care at the inception stage itself whenever any layout approval is being granted in being careful about the water submersion area, runoff area, catchment area, *ayacut* area, etc., not being converted into real estate areas, and even if any unauthorized layout, mushrooms, it shall be the duty of the respondents to prevent it at the inception and not to allow people to construct houses in these submersible areas and water bodies, and thereafter to claim equity as it is the bounden duty of the State even to prevent any loss of life on account of the same also.

(v) The respondents shall strictly implement Rule 6 of the Tamil Nadu Change of Land Use (From Agriculture to Non-agriculture Purposes in Non-



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planning Areas) Rules, 2017, vide G.O.Ms. No.79, Housing and Urban Development Department, dated 04/05/2017 and care should be taken not to grant lay-out approvals or approval for development in respect of lands under cultivation ;

(vi) There will be no orders as to costs. Consequently the miscellaneous petition is closed.

(T.R.,ACJ.,)
11.04.2023

(D.B.C.J.,)

Index : Yes
Speaking order
Neutral citation : Yes

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To

1.The Collector,
Government of Tamil Nadu,
Collectorate Office,
Namakkal.

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Rasipuram Tauk,
Namakkal District.



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T.RAJA, ACJ.,



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AND

D. BHARATHA CHAKRAVARHY, J

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